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10/811,696	03/29/2004	Donald Carroll Roe	9533	1358

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION - WEST BLDG.  
WINTON HILL BUSINESS CENTER - BOX 412  
6250 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER
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STEPHENS, JACQUELINE F

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/811,696  
Filing Date: March 29, 2004  
Appellant(s): ROE ET AL.

**MAILED  
DEC 27 2007  
GROUP 3700**

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Charles R. Ware  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/14/07 appealing from the Office action  
mailed 1/11/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,571,096	Dobrin et al.	11-1996
4,695,278	Lawson	9-1987

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 5-8 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobrin et al. USPN 5571096.

As to claims 1, 3, 5, 6, 8, 19, and 20, Dobrin discloses a disposable absorbent article comprising: an absorbent core 28, a liquid permeable topsheet 24, and a liquid

impermeable backsheet 26 as claimed. The backsheet of Dobrin has a physical variation along at least one axis, wherein a physical variation defines a first backsheet zone and a second backsheet zone (Figures 2 and 3). The physical variation is measured by the physical properties of thickness, weight, and density as Dobrin discloses microapertured regions and unapertured regions of the backsheet. The apertured regions have a lower weight, thickness, and density as compared to unapertured regions. Figure 2 shows a physical variation in the lateral axis between zones 76 and 74. However, there is some physical variation in the longitudinal axis as well, which is demonstrated in Figure 3 between the apertured and unapertured regions of zone 76. Dobrin discloses at least one elastomeric element 65 attached to the backsheet as claimed (see col. 12, lines 21-31 where Dobrin incorporates by reference Lawson USPN 4695278 who teaches elastic members attached in an elastically contractible condition col. 7, line 28 through col. 8, line 13). Dobrin shows elastic components in the waist region, which are not present in the crotch regions. Therefore, a given property, such as density and weight differs from an average of the given property of at least one of the waist regions.

As to claim 7, Dobrin incorporates by reference Lawson who teaches curvilinear elastic elements (Lawson col. 8, lines 44-51).

As to claims 11-17, Dobrin teaches a non-uniform backsheet where an outer cover 90 is joined to a central unapertured region, an outer apertured region or both (col. 9, line 46 through col. 10, line 33).

As to claim 18, Dobrin incorporates by reference Lawson who teaches curvilinear elastic elements (Lawson col. 8, lines 44-51).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobrin USPN 5571096. Dobrin teaches a backsheet having zones, which vary by a physical variation, see the rejection of claim 1 supra. Dobrin teaches an elastomeric element attached to the backsheet in an elastically contractible condition, which allows the elements to contract or gather the backsheet in a relaxed state, indicating the path length of the element is less than a total path length of the backsheet where the element is attached. Therefore, the general conditions of this claim are disclosed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the outer cover of Dobrin with the claimed ratios of the present invention, since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, In re Aller et al. 105 USPQ 233.

**(10) Response to Argument**

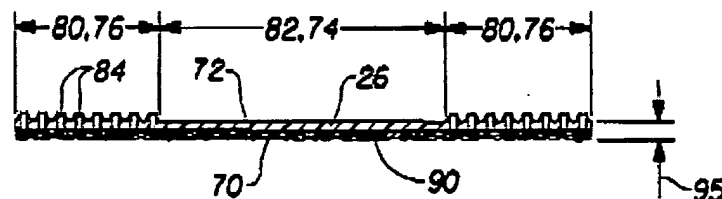
Applicant's arguments filed 9/14/07 have been fully considered but they are not persuasive. Applicant repeats the argument that Dobrin does not teach a backsheet having a physical variation along a longitudinal axis of the article. Specifically, Applicant argues along a longitudinal axis of the article of Figure 2 of the Dobrin reference, there are no transitions between apertured and unaperatured zones. However, the examiner maintains a physical variation exists in the longitudinal direction. Figure 3, as applicant points out appears to be a lateral cross-sectional view of the article.

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Nov. 5, 1996

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**Fig. 3**



Figure 3 shows apertured and unapertured regions representing first and second zones of the backsheet. The physical variation as claimed exists between the apertured and unapertured regions. The apertured and unapertured regions represent a physical variation in density and thickness. As to the argument that the physical variation does not exist in the longitudinal direction, the apertured and unapertured regions extend longitudinally as shown in Figure 2.

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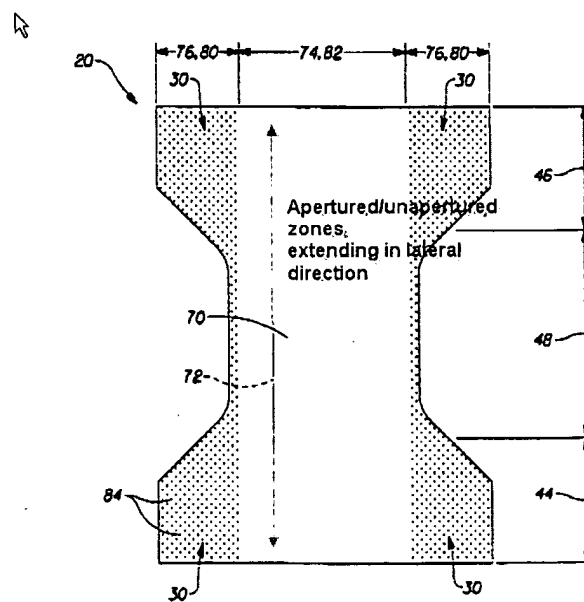


Fig. 2


These regions are present in a lateral and longitudinal direction in zone 76 as shown in Figure 2 above. Therefore, the rejection is maintained.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

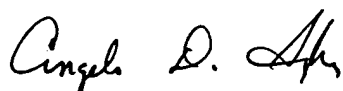
Respectfully submitted,

  
Jacqueline F. Stephens  
Primary Examiner  
Art Unit 3761

Conferees:

Angela Sykes  
Supervisory Primary Examiner  
Art Unit 3762

Tatyana Zalukaeva  
Supervisory Primary Examiner  
Art Unit 3761



ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3762

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

